

REGULATION 7

PROCEDURE BEFORE THE HEARING BOARD

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RULE 701 GENERAL

Adopted 11-12-74
(Amended 05-24-77)

This regulation shall apply to all hearings before the Hearing Board of the Air Pollution Control District.

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RULE 702 FILING PETITIONS

Adopted 11-12-74
(Amended 05-24-77, 04-21-81)

- A. A request for a hearing shall be initiated by the filing of a petition with the Hearing Board of the Air Pollution Control District of the County of Placer, after service of a copy of the petition has been made on the Air Pollution Control Officer. If the petitioner is the Air Pollution Control Officer, a copy of the petition shall be served upon the party named in the petition. Service may be made in person or by mail, and service may be proved by written acknowledgment of the person served or by the affidavit of the person making the service.
- B. All petitions shall be typewritten, double spaced, on legal or letter size paper, on one side of the paper only, leaving a margin of at least one inch at the top and left side of each sheet.
- C. Each petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner it shall set forth his authority to sign.

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RULE 703 CONTENTS OF PETITION

Adopted 11-12-74
(Amended 05-24-77)

Every petition shall state:

- A. The name, address and telephone number of the petitioner, and the person authorized to receive service of notice, if different therefrom.
- B. Whether the petitioner is an individual, partnership, corporation or other entity, and the names and addresses of the officers, if a corporation, and the names and addresses of the persons in control, if some other entity.
- C. The name, location, and type of business or activity concerned.
- D. A brief description of the article, machine, equipment or other contrivance, if any involved.
- E. The nature of the petition which is being filed, that is, whether the petition is being filed pursuant to Sections 40824, 41703, 42307, 42357 or any other sections of the Health and Safety Code, or to review the denial or conditional granting of an authority to construct or permit to operate under RULE 501 of these rules and regulations.
- F. Each petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner, it shall set forth his authority to sign.
- G. Petitions for revocation of permits shall allege, in addition, the rule under which permit was granted, the rule or section which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violations.
- H. Petitions for the reinstatement of suspended permits shall allege, in addition, the rule under which the permit was granted, the request and alleged refusal which formed the basis for such suspension, together with a brief statement as to why information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent, and, if so, when it will be furnished.

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RULE 704 PETITIONS FOR VARIANCES

Adopted 11-12-74
(Amended 05-24-77)

In addition to the requirements set forth in RULE 703, petitions for variances shall state briefly:

- A. The section, rule or order complained of.
- B. The facts showing why compliance with the section, rule or order is unreasonable.
- C. What period of time is needed for compliance and increments of progress if variance required exceeds one year.
- D. The damage or harm resulting or which would result to petitioner from a compliance with such section, rule or order.
- E. The requirements which petitioner can meet and the date when petitioner can comply with such requirements.
- F. The advantages and disadvantages to the residents of the District resulting from requiring compliance or resulting from granting a variance.
- G. Whether or not operations under such variance, if granted, would constitute a nuisance.
- H. Petitioner shall be required to set forth quarterly progress reports toward such compliance with the statutory provision or rule or regulation for which he seeks a variance and when total compliance shall be accomplished.

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RULE 705 APPEAL FROM DENIAL

Adopted 11-12-74
(Amended 05-24-77)

A petition to review the denial or conditional approval of a permit shall, in addition to the information required by RULE 703, set forth a summary of the permit application or a copy thereof and the alleged reasons for the denial or conditional approval and the reasons for appeal.

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RULE 706 FAILURE TO COMPLY WITH RULES

Adopted 11-12-74
(Amended 05-24-77)

No petition shall be accepted by the Hearing Board for filing which does not comply with these rules relating to the form, filing and service of petitions, unless the chairman or any two members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The chairman or any two members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

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RULE 707 ANSWERS

Adopted 11-12-74
(Amended 05-24-77)

Any person may file an answer within 10 days after service. All answers shall be served in the same manner as that specified for petitions under RULE 702.

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RULE 708 DISMISSAL OF PETITION

Adopted 11-12-74
(Amended 05-24-77)

The petitioner may, by giving notice to the Hearing Board, dismiss the petition at any time prior to the time set for a hearing thereof, without a hearing or meeting of the Hearing Board. The Hearing Board shall notify all interested person of such dismissal.

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RULE 709 PLACE OF HEARING

Adopted 11-12-74
(Amended 05-24-77)

Hearing shall be held at a place readily accessible to the public and as designated by the Hearing Board.

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RULE 710 NOTICE OF HEARING

Adopted 11-12-74
(Amended 05-24-77)

- A. Except as otherwise provided in this Regulation, the Hearing Board shall serve a notice of the time and place of a hearing upon the District Air Pollution Control Officer, and upon the applicant or permittee affected, not less than ten (10) days prior to such hearing.
- B. Except as otherwise provided in this Regulation, the Hearing Board shall send notice of a hearing to every person who requests such and shall obtain publication of such notice in at least one newspaper of general circulation within the District. The notice shall state the time and place of the hearing and such information as may be necessary to reasonably apprise the people within the District of the nature and purpose of the meeting.
- C. In case of a hearing to consider an application for an interim variance, as authorized under Section 43251:
 - 1. The Hearing Board shall serve reasonable notice of the time and place of the hearing upon the Air Pollution Control Officer and upon the applicant. Subsection (B) of this rule shall not apply.
- D. In case of a hearing to consider an application for a variance, or series of variances, to be in effect for a period of not more than ninety (90) days, the Hearing Board shall serve a notice of the time and place of a hearing to grant such variance upon the Air Pollution Control Officer, all other Districts within the basin, the State Board, the Environmental Protection Agency, and upon the applicant or permittee, not less than ten (10) days prior to such hearing. Subsection (B) of this rule shall not apply.
- E. In case of a hearing to consider for a variance, other than an interim variance or a 90-day variance, or an application for a modification of a final compliance date in a variance previously granted, the notice requirements for such a hearing shall be as follows:
 - 1. The Hearing Board shall serve a notice of the time and place of a hearing to grant a variance upon the Air Pollution Control Officer, all other Districts within the air basin, the State Board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 30 days prior to such hearing.
 - 2. The Hearing Board shall also publish a notice of the hearing in at least one newspaper of general circulation in the District, and shall send the notice to every person who requests such a notice, at least 30 days prior to the hearing.

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RULE 711 EVIDENCE

Adopted 11-12-74
(Amended 05-24-77)

- A. Oral evidence shall be taken only on oath or affirmation.
- B. Each party shall have these rights:
 - 1. To call and examine witnesses;
 - 2. To introduce exhibits;
 - 3. To cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination;
 - 4. To impeach any witness regardless of which party first called him to testify;
 - 5. To rebut the evidence against him.
- C. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- D. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of such serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- E. All evidence, oral or written, and all exhibits shall be recorded at the time of the hearing and all records shall be maintained for a period of time as specified by law or as determined by the Air Pollution Control Board.

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RULE 712 PRELIMINARY MATTERS

Adopted 11-12-74
(Amended 05-24-77)

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the chairman of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

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RULE 713 OFFICIAL NOTICE

Adopted 11-12-74
(Amended 05-24-77)

The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this State.

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RULE 714 CONTINUANCES

Adopted 11-12-74
(Amended 05-24-77)

The chairman of the Hearing Board shall grant any continuances of 15 days or less, concurred in by petitioner, the Air Pollution Control Officer and by every person who has filed an answer in the action and may grant any reasonable continuance; in either case, such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

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RULE 715 DECISION

Adopted 11-12-74
(Amended 05-24-77)

The decision shall be in writing, served and filed within 15 days after submission of the cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issue presented and the order of the Hearing Board. A copy shall be mailed, or delivered to the Air Pollution Control Officer, ARB, the petitioner, and to every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing.

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RULE 716 EFFECTIVE DATE OF DECISION

Adopted 11-12-74
(Amended 05-24-77)

The decision shall become effective 15 days after delivering or mailing a copy of the decision, as provided in RULE 715 or the Hearing Board may order that the decision shall become effective sooner.

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RULE 717 LACK OF PERMIT

Adopted 11-12-74
(Amended 05-24-77)

The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any equipment until a permit has been granted or denied by the Air Pollution Control Officer, except that an appeal from a denial of a permit and a petition for a variance may be filed with the Hearing Board in a single petition. A variance granted by the Hearing Board after a denial of a permit by the Air Pollution Control Officer may include a permit for the duration of the variance.

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